

January 25, 2016

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VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

RE: Notice of Violations and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

The Conservation Law Foundation ("CLF")¹ hereby gives notice to the addressed persons of its intent to file suit pursuant to Section 505 of the Federal Water Pollution Control Act ("Clean Water Act," "CWA," or "Act"), 33 U.S.C. § 1365(a), for violations of the Act specified below. This letter constitutes notice pursuant to 40 C.F.R., Part 135 (the "Notice"), to the addressed persons of CLF's intention to file suit in United States District Court of the District of Massachusetts, seeking appropriate equitable relief, civil penalties, and other relief no earlier than 60 days from the postmark date of this Notice letter.

The subject of this action is three-fold. First, Bunky's Marina (hereinafter "Bunky's Marina"), a business owned and operated by the principals of Bunky's Realty, LLC, is discharging stormwater directly associated with boat storage, repair, and transportation (SIC Code 4493) and boat building and repair (SIC Code 3732) at two business locations, located at 112 Liberty Street, Danvers, MA 01923 and 128 Rear Water Street, Danvers, MA 01923 (the "Facilities"), to the waters of the United States without a permit, in violation of Sections 301(a) and 402(p)(2)(B)

¹ CLF is a not-for-profit 501(C)(3) organization dedicated to the conservation and protection of New England's environment. Its mission includes the conservation and protection of the many uses of the waters in and around the Charles watershed for, among other things, fishing, recreation, scenic/aesthetic and scientific purposes. CLF's membership includes people who live in or near the Charles watershed, and use and enjoy the watershed for recreational, aesthetic, and/or scientific purposes. The interests of CLF's members are adversely affected by the Facility's discharges of stormwater pollution to the receiving waters without a permit and in violation of the Clean Water Act.

of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B). Second, Bunky's Marina has failed to obtain coverage under any Clean Water Act permit including the Multi-Sector General Permit² ("MSGP") adopted by the United States Environmental Protection Agency ("EPA") for industrial sources of polluted stormwater runoff, and failed to comply with the specific requirements of any such permit, in violation of Sections 402(p)(3)(A) and 402(p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1). In addition, Bunky's Marina has failed to obtain individual National Pollutant Discharge Elimination System ("NPDES") permit coverage for the Facilities' process water discharges associated with its engine flushing, filter cleaning, hull pressure washing and other boat maintenance services and has applied pavement sealants to its boat ramp up to the water's edge without appropriate permits or environmental safeguards.

BACKGROUND

The Porter River (Waterbody ID MA93-04) is a 0.134-square mile waterbody within the Charles watershed. The Waters River (Waterbody ID MA93-01) is a 0.09-square mile waterbody within the Charles watershed. The first location of Bunky's Marina, located at 112 Liberty Street, Danvers, MA, discharges into the Porter River, which flows directly thereafter into the Danvers River (Waterbody ID MA93-09). The second location of Bunky's Marina, located at 128 Rear Water Street, Danvers, MA 01923, discharges into the Waters River, which flows directly thereafter into the Danvers River (Waterbody ID MA93-09). The Danvers River flows into Beverly Harbor (Waterbody ID MA93-20) and the Atlantic Ocean. EPA has designated the Porter River, Waters River, and Beverly Harbor as habitats for "fish, shellfish, and wildlife protection and propagation," "aquatic life harvesting" and recreation.³⁴⁵ EPA has designated the Danvers River as a habitat for "aquatic life harvesting" and recreation.⁶ The use of these waterways for other purposes is unassessed at this time.

² ENVIRONMENTAL PROTECTION AGENCY, MULTI-SECTOR GENERAL PERMIT FOR STORMWATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY (MSGP) [hereinafter MSGP], *available at* http://www2.epa.gov/sites/production/files/2015-10/documents/msgp2015_finalpermit.pdf (last visited January 6, 2016).

³ See 2012 Waterbody Report for Porter River *at* http://ofmpub.epa.gov/waters10/attains_waterbody.control?p_auid=MA93-04&p_list_id=MA93-04&p_cycle=2012 (last visited January 15, 2016).

⁴ See 2012 Waterbody Report for Beverly Harbor *at* http://ofmpub.epa.gov/waters10/attains_waterbody.control?p_auid=MA93-20&p_list_id=MA93-20&p_cycle=2012 (last visited January 15, 2016).

⁵ See 2012 Waterbody Report for Waters River *at* http://ofmpub.epa.gov/waters10/attains_waterbody.control?p_auid=MA93-01&p_list_id=MA93-01&p_cycle=2012 (last visited January 25, 2016).

⁶ See 2012 Waterbody Report for Danvers River *at* http://ofmpub.epa.gov/waters10/attains_waterbody.control?p_auid=MA93-09&p_list_id=MA93-09&p_cycle=2012 (last visited January 15, 2016).

EPA has designated the Porter River (Waterbody ID MA93-04) as impaired pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d), for failure to meet minimum water quality standards. The Porter River is impaired for pathogens, namely fecal coliform. “Marina/boating pumpout releases” and “marina/boating sanitary on-vessel discharges” have been identified as probable sources contributing to impairment in MA93-04.⁷

EPA has designated the Waters River (Waterbody ID MA93-01) as impaired pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d), for failure to meet minimum water quality standards. The Porter River is impaired for pathogens, namely fecal coliform. Stormwater is a probable source of impairments in MA93-01.⁸

EPA has designated the Danvers River (Waterbody ID MA93-09) as impaired pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d), for failure to meet minimum water quality standards. The Danvers River is impaired for pathogens, namely fecal coliform. “Marina/boating pumpout releases” and “marina/boating sanitary on-vessel discharges” have been identified as probable sources contributing to impairment in MA93-09.⁹

EPA has designated Beverly Harbor (Waterbody ID MA93-20) as impaired pursuant to Section 303(d) of the Act, 33 U.S.C. § 1313(d), for failure to meet minimum water quality standards. Beverly Harbor is impaired for pathogens, namely fecal coliform. “Marina/boating pumpout releases” and “marina/boating sanitary on-vessel discharges” have been identified as probable sources contributing to impairment in MA93-20.¹⁰

Stormwater is water from precipitation events that flows across the ground and pavement after rain events or after snow and ice melt.¹¹ Industrial activities, such as material handling and storage, vessel refinishing and painting, vessel and equipment fluid changes, equipment maintenance and cleaning, boat and vehicle exterior washing, industrial processing, mechanical repairs, fueling, engine flushing, or other operations that occur at industrial facilities, may be exposed to stormwater flow.¹² Stormwater from industrial facilities, contaminated with pollutants, is then conveyed into nearby waterbodies.¹³

In order to discharge stormwater lawfully, Bunky’s Marina is required to apply for coverage under a Clean Water Act discharge permit such as the MSGP. Since at least 2013, Bunky’s

⁷ See *supra* note 3.

⁸ See *supra* note 5.

⁹ See *supra* note 6.

¹⁰ See *supra* note 4.

¹¹ See 40 C.F.R. § 122.26(b)(13).

¹² See 40 C.F.R. § 122.26(b)(14).

¹³ See 58 Fed. Reg. 61,146, 61,154 (November 19, 1993).

Marina has been specifically required to apply for coverage under the MSGP by filing a Notice of Intent (“NOI”) within ninety days after the initial issuance of the MSGP.¹⁴ On June 4, 2015, after expiration of the prior permit, the EPA issued the 2015 MSGP requiring all covered facilities to file an NOI for coverage under the 2015 permit.

Bunky’s Marina has failed to obtain coverage under the MSGP or any other valid authorization. Therefore, Bunky’s Marina is operating in violation of the Clean Water Act.

PERSONS RESPONSIBLE FOR ALLEGED VIOLATIONS

Bunky’s Marina and Bunky’s Realty, LLC are the persons, as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5), responsible for the violations alleged in this Notice. Under the ownership of Bunky’s Realty, LLC, Bunky’s Marina has operated the Facilities since at least 2013 and currently advertises as the operator of the Facilities.¹⁵ Bunky’s Marina and its agents and directors, including but not limited to Jeffrey S. Bunk, owner, have operational control over the day-to-day industrial activities at these Facilities. Therefore, they are responsible for managing stormwater at the Facility in compliance with the Clean Water Act.

LOCATION OF THE ALLEGED VIOLATION

The violations alleged in this Notice have occurred and continue to occur at the marina and boat maintenance Facilities located at 112 Liberty Street, Danvers, MA 01923, and at 128 Rear Water Street, Danvers, MA 01923.

ACTIVITIES ALLEGED TO BE VIOLATIONS

Bunky’s Marina has engaged, and continues to engage in, “industrial activities,” and its operations fall under SIC Codes 4493 and 3732, within the meaning of 40 C.F.R. §§ 122.26(b)(14)(ii) & (viii).¹⁶ Because the Facilities have primary SIC Codes of 4493 and 3732 and discharges stormwater associated with industrial activity, Bunky’s Marina is required to apply for, obtain coverage under, and comply with the requirements of a NPDES permit such as

¹⁴ EPA’s Final National Pollutant Discharge Elimination System Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity (MSGP) was first issued in 1995, reissued in 2000, 2008, and 2015. *See* 60 Fed. Reg. 50,804 (Sept. 29, 1995); 65 Fed. Reg. 64,746 (Oct. 30, 2000); 73 Fed. Reg. 56,572 (Sept. 29, 2008); 80 Fed. Reg. 34,403 (June 16, 2015). *See* MSGP parts 1.1 and 1.2.

¹⁵ *See* Massachusetts state records:

http://corp.sec.state.ma.us/CorpWeb/CorpSearch/CorpSummary.aspx?FEIN=043537371&SEARCH_TYPE=1 (last visited January 15, 2016).

¹⁶ *See* MSGP, Appendix D: Activities Covered. Water transportation (SIC 4493) and boat and ship building and repair (SIC 3732) facilities are subject to the requirements of the MSGP for stormwater discharges.

the MSGP. In addition, Bunky's Marina is required to obtain individual NPDES permit coverage for process wastewater discharges that may result from activities such as hull pressure washing, flushing boat engines and cleaning fuel filters. Bunky's Marina has failed to take any of these required steps.

Activities at the Facilities include, but are not limited to: boat transportation, storage, winterization and maintenance; fueling; flushing boats engines and draining blocks or manifolds; hull pressure washing, repairing engines; cleaning and changing oil filters and fuel filters; handling, transferring, storing and disposing of materials; and shipboard processes resulting in improper discharges to storm sewers or into receiving water. Machinery and other equipment is operated and stored outdoors, therefore being exposed to and corroded by the elements. Vehicles driving on and off the Facilities site track pollutants off-site.

Industrial equipment, materials and vehicles at the Facilities are exposed to precipitation and snowmelt. Precipitation falls on and flows over the Facilities, picking up paint solids, metals, heavy metals, total suspended solids (TSS), total dissolved solids (TDS), diesel/gas fuel, ethylene glycol (anti-freeze), acid and alkaline wastes, solvents, oil, low density waste (floatables), trash, and other pollutants associated with the Facilities' operations. The polluted runoff is then conveyed off-site into waters of the United States via man-made collection systems, sloped surfaces and site grading, shallow subsurface hydrological connections, and through the operation of gravity.

STANDARDS AND LIMITATIONS ALLEGED TO HAVE BEEN VIOLATED

The Clean Water Act prohibits the discharge of pollutants to the waters of the United States except in accordance with a valid NPDES permit.¹⁷ Bunky's Marina discharges stormwater associated with its industrial activity, as defined by 40 C.F.R. § 122.26(b)(14), from its Facilities into waters of the United States. Because Bunky's Marina has not obtained coverage for these stormwater discharges under the MSGP or an individual NPDES permit, it is illegally discharging stormwater without a permit, in violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).¹⁸ By failing to apply for and comply with the specific requirements of the MSGP and individual NPDES permit program, Bunky's Marina is in violation of Sections 402(p)(3)(A) and 402(p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1). In addition, unpermitted discharges of process wastewater constitute violations of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), and CLF puts Bunky's Marina on notice that CLF intends to pursue claims related to Bunky's Marina's unpermitted discharges of process wastewater to waters of the United States.

¹⁷ 33 U.S.C. § 1311(a).

¹⁸ See 33 U.S.C. § 1362(12); 40 C.F.R. § 122.2; MSGP, Appendix A: Definitions, Abbreviations, and Acronyms (defining the term "discharge of a pollutant" as, *inter alia*, "any addition of any 'pollutant' or combination of pollutants to 'waters of the United States' from any 'point source'").

a. Bunky's Marina is discharging stormwater to waters of the United States without a permit.

Bunky's Marina is an industrial discharger with primary SIC Codes of 4493 and 3732, which means that pursuant to Section 402(p) of the Act, 33 U.S.C. § 1342(p), Bunky's Marina is obligated to apply for coverage under the MSGP or to obtain other legal authorization. Because Bunky's Marina has operated and continues to operate without a permit under Section 402(p), 33 U.S.C. § 1342(p), Bunky's Marina is in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

In addition, during storm events, Bunky's Marina's "industrial activities" at its Facilities have resulted in a "discharge of pollutants" within the meaning of Section 502(12) of the CWA, 33 U.S.C. § 1362(12) and "stormwater discharge associated with industrial activity" within the meaning of 40 C.F.R. § 122.26(b)(14), from its Facilities on each and every day that there has been a measurable precipitation event of above 0.1 inches.¹⁹ There have been many such storm events since 2013. The Facilities are generating pollutants from and through point sources including but not limited to: ramp systems, equipment, catch basins and drains, machines and equipment left outdoors, site grading and sloped surfaces, vehicles driving on and off the Facilities, and other conveyances to the Porter River, Waters River, Danvers River, Beverly Harbor, and other waters of the United States.²⁰ The Porter River, Waters River, Danvers River, and Beverly Harbor flow into the Atlantic Ocean, and all of the aforementioned waterbodies are "waters of the United States," as defined in 40 C.F.R. § 122.2, and therefore are also "navigable waters," as defined in Section 502(7) of the CWA, 33 U.S.C. § 1362(7). The Facilities are discharging this industrial stormwater without the permit required under Section 402 of the Act, 33 U.S.C. § 1342.

b. Bunky's Marina is discharging process wastewater to waters of the United States without a permit.

¹⁹ See 40 C.F.R. § 122.26(c)(i)(E)(6). EPA has determined that precipitation greater than 0.1 inches in a 24-hour period constitutes a measurable precipitation event for the purposes of evaluating stormwater runoff associated with industrial activity.

²⁰ These discharges constitute "point sources" as defined by 33 U.S.C. § 1362(14) and 40 C.F.R. § 122.2. CLF specifically puts Bunky's Marina on notice that the unpermitted stormwater discharges associated with industrial activity include discharges from the Facility areas specified in 40 C.F.R. § 122.26(b)(14). See also 40 C.F.R. § 122.2, which states that the definition of "discharge of a pollutant" "includes additions of pollutants into waters of the United States from: surface runoff which is collected or channelled by man[.]"

Boat washwater is classified as “process wastewater” under the federal Clean Water Act and as defined in 40 C.F.R. § 122.2.²¹ Wastewater produced by flushing engines, washing boats, and cleaning fuel filters can contain a variety of pollutants including detergents, oil, grease, and dissolved metals from antifouling paints. Ablative bottom paints, which are designed to slowly slough away from the boat hull, are particularly prone to contaminating washwater with toxic metals such as zinc, copper, and occasionally lead. In addition, solids suspended in washwater, such as paint chips and organic material, can pollute ground and surface water if handled improperly. Process wastewater can be toxic to marine life and can have severe and long-term impacts on aquatic environments. In addition, improperly managed pressure washing or engine flushing operations can result in unsightly plumes that discolor natural waterways and stain natural features with bottom paint and oils.

Discharges of process wastewater that result from flushing engines and cleaning boat hulls and equipment are not covered under the MSGP. Discharges of process wastewater must instead be covered under an individual NPDES permit. For both of its locations, Bunky’s Marina does not have an individual NPDES permit authorizing the discharge of pressure washwater to waters of the United States. CLF intends to pursue claims related to Bunky’s Marina’s unpermitted discharges of process wastewater to waters of the United States, namely the Porter River and the Waters River.

c. Bunky’s Marina is violating the Clean Water Act by failing to obtain coverage and failing to comply with the requirements of the MSGP.

Bunky’s Marina is violating Sections 402(p)(3)(A) and 402(p)(3)(4) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A), and 40 C.F.R. §§ 122.26(c)(1) and (e)(1), by failing to apply for, obtain coverage, and comply with the requirements of the MSGP.²² The Facilities have primary SIC Codes of 4493 and 3732 and must obtain coverage under the MSGP for its stormwater discharges and for stormwater discharges from any co-located industrial activities.²³ Bunky’s Marina’s failure to obtain coverage and comply with the permit is in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).²⁴

²¹ “Process wastewater” is here defined as “any water which, during manufacturing or processing, comes into direct contact with or results from the production or use of any raw material, intermediate product, finished product, byproduct, or waste product.”

²² MSGP part 1.1 and 1.2.

²³ See MSGP part 1.1; MSGP parts 8.Q and 8.R.

²⁴ A thorough search of EPA’s database indicates that Bunky’s Marina has not filed an NOI for the Facility.

1) Bunky's Marina Must Develop and Implement a Stormwater Pollution Prevention Plan (SWPPP).

As a prerequisite to applying for coverage under the MSGP, Bunky's Marina must develop and implement a Stormwater Pollution Prevention Plan ("SWPPP") for each of its facilities.²⁵ [KM 1] The SWPPPs must include, but are not limited to, the following: information related to a company stormwater pollution prevention team, a site description, a summary of pollutant sources, a description of control measures, and schedules and procedures pertaining to control measures and monitoring.²⁶ Bunky's Marina has failed to develop and implement SWPPPs in accordance with the MSGP requirements in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

2) Bunky's Marina Must Submit to EPA a Complete Notice of Intent to be Covered under the MSGP.

To be eligible to discharge under the MSGP, Bunky's Marina must submit a complete Notice of Intent ("NOI") to the EPA for each of its facilities.²⁷ To complete the NOIs, Bunky's Marina is required to determine whether the bodies of water to which the stormwater discharges are "impaired" waterbodies, and whether the Facilities discharge any specific pollutants listed on the NOI to these waterbodies.²⁸ The Porter River and the Waters River are classified as "impaired" waterways.²⁹ Additionally, as part of preparing the NOIs, the covered Facilities must make certain verifications, such as ensuring that no harm is done to a species in violation of the Endangered Species Act.³⁰ Bunky's Marina has failed to prepare and file NOIs meeting all applicable requirements in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

3) Bunky's Marina Must Take Control Measures and Meet Water-Quality Effluent Limitations.

To be eligible to discharge under the MSGP, Bunky's Marina must select, design, install, and implement control measures (including best management practices) to prevent polluted stormwater discharges from reaching nearby waterbodies. Bunky's Marina must address the selection and design considerations in the permit, meet the non-numeric effluent limitations in the permit, and meet limits contained in applicable permit effluent limitations guidelines.³¹

²⁵ See MSGP part 5.

²⁶ See MSGP part 5.2.

²⁷ See MSGP part 1.2.

²⁸ See MSGP part 2.2.2.

²⁹ See *supra* notes 3-8.

³⁰ See MSGP part 1.1.4.5 and 2.3.

³¹ See MSGP part 2.1.

These control practices must be in accordance with good engineering practices and manufacturer's specifications.³² If the control measures are not achieving their intended effect of minimizing pollutant discharges, the permittee must modify these control measures as expeditiously as practicable.³³ Bunky's Marina has failed to cover the materials and operations that may result in polluted stormwater runoff. Bunky's Marina has not implemented the required control measures in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

4) Bunky's Marina Must Conduct Routine Facility Inspections.

To be eligible to discharge under the MSGP, Bunky's Marina must conduct routine inspections of all areas of the Facilities where industrial materials or activities are exposed to precipitation, and must ensure that all stormwater control measures comply with the effluent limits contained in the MSGP.³⁴ Routine inspections must be conducted at least quarterly but in many instances monthly inspections are most appropriate.³⁵ These inspections must occur when the Facilities are in operation.³⁶ The schedule of these inspections must be included in the Facilities' SWPPPs and be performed by qualified personnel.³⁷ Bunky's Marina has failed to conduct the required routine inspections in accordance with the MSGP requirements in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

5) Bunky's Marina Must Comply with the Required Monitoring and Sampling Procedures.

To be eligible to discharge under the MSGP, Bunky's Marina must collect and analyze stormwater samples and document monitoring activities consistent with the procedures in the MSGP.³⁸ The MSGP requires five types of analytical monitoring (one or more of which may apply) including quarterly benchmark monitoring, annual effluent limitations guidelines monitoring, State or Tribal-specific monitoring, impaired waters monitoring, and other monitoring as required by the EPA.³⁹ An operator must monitor each outfall identified in the SWPPP covered by a numeric effluent limit.⁴⁰ Required monitoring must be performed after stormwater events that result in an actual discharge on a required schedule.⁴¹ All monitoring data collected under the MSGP must be reported to EPA. Furthermore, because the Porter River

³² *Id.*

³³ *Id.* See also MSGP Part 4.

³⁴ See MSGP part 3.1.

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ See MSGP part 6.

³⁹ See MSGP part 6.2.

⁴⁰ See MSGP part 6.1.1.

⁴¹ See MSGP part 6.1.3.

and the Waters River qualify as “impaired waters” under Section 303(d) of the CWA, 33 U.S.C. § 1313(d), Bunky’s Marina must monitor for all pollutants for which the Porter River and the Waters River are impaired.⁴² Bunky’s Marina has failed to conduct the required monitoring under the MSGP and has failed to submit the required monitoring reports to EPA in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

6) Bunky’s Marina Must Carry Out the Required Reporting and Recordkeeping.

Bunky’s Marina must maintain and submit any and all required monitoring data.⁴³ Such monitoring data includes the following: annual reports to EPA which include the Facilities’ findings from the annual comprehensive site inspections and any documentation of corrective actions;⁴⁴ an Exceedance Report to the EPA if any of the follow-up monitoring shows exceedances of a numeric effluent limit;⁴⁵ and any other required reports under the MSGP.⁴⁶ Bunky’s Marina has failed to maintain the required records and failed to submit all required monitoring data under the MSGP in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

7) Bunky’s Marina Must Comply with the Requirements of MSGP Parts Q and R

Bunky’s Marina must also comply with the sector-specific requirements contained in Subparts Q and R under Part 8 of the MSGP.⁴⁷ Subparts Q and R require water transportation and boat building and repair facilities to implement additional technology-based effluent limits,⁴⁸ meet additional SWPPP and inspection requirements,⁴⁹ and monitor stormwater discharges for compliance with the benchmark limitations applicable specifically to water transportation facilities.⁵⁰ Bunky’s Marina has failed to comply with the requirements of Subparts Q and R of the MSGP in violation of the MSGP and Section 402(p) of the Clean Water Act, 33 U.S.C. § 1342(p).

DATES OF VIOLATION

Each day on which Bunky’s Marina operates its Facilities without permit coverage or discharges stormwater and/or process wastewater without a permit from the Facilities is a separate and

⁴² See MSGP part 6.2.4.

⁴³ See MSGP part 7.

⁴⁴ See MSGP part 7.5.

⁴⁵ See MSGP part 7.6.

⁴⁶ See MSGP part 7.7.

⁴⁷ See MSGP, Appendix D, Table D-1, Sectors Q and R.

⁴⁸ See MSGP parts 8.Q.3; 8.R.3.

⁴⁹ See MSGP part 8.Q. 4; 8.Q.5; 8.R.4; 8.R.5

⁵⁰ See MSGP 8.Q.6.

distinct violation of Sections 301(a) and 402(p)(2)(B) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p)(2)(B).

Bunky's Marina has discharged stormwater without a permit in violation of Section 301(a) of the CWA, 33 U.S.C. § 1311(a), on every day since at least 2013 on which there has been a measurable precipitation event. Each day on which Bunky's Marina operates its Facilities without permit coverage or discharges process water without a permit from the Facilities is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a).

Every day, since at least 2013, on which Bunky's Marina has failed and continues to fail to apply for, obtain coverage, and comply with the requirements of the MSGP is a violation of Section 402(p)(3)(A) and (p)(4)(A) of the CWA, 33 U.S.C. §§ 1342(p)(3)(A) and (p)(4)(A).

Each day on which Bunky's Marina operates its Facilities without permit coverage or discharges process wastewater without a permit from the Facilities is a separate and distinct violation of Section 301(a) of the CWA, 33 U.S.C. §§ 1311(a).

These violations are ongoing and continuous, and barring a change in the stormwater management controls at the Facilities and full compliance with the permitting requirements of the Clean Water Act, these violations will continue indefinitely.

RELIEF REQUESTED

Bunky's Marina is liable for the above-described violations occurring prior to the date of this letter, and for every day that these violations continue. Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Act subjects Bunky's Marina to a penalty up to \$37,500 per day for each violation that occurred after January 12, 2009.⁵¹ CLF will seek the full penalties allowed by law.

In addition to civil penalties, CLF will seek declaratory relief and injunctive relief to prevent further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. CLF will seek an order from the Court requiring Bunky's Marina to correct all identified violations through direct implementation of control measures and demonstration of full regulatory compliance.

Lastly, pursuant to Section 505(d) of the Act, 33 U.S.C. § 1365(d), CLF will seek recovery of costs and fees associated with this matter.

⁵¹ 40 C.F.R. § 19.2

CONCLUSION

During the 60-day notice period, CLF is willing to discuss effective remedies for the violations noted in this letter that may avoid the necessity of further litigation. If you wish to pursue such discussions, please have your attorney contact Zachary Griefen within the next 20 days so that negotiations may be completed before the end of the 60-day notice period. We do not intend to delay the filing of a complaint in federal court if discussions are continuing at the conclusion of the 60 days.

Sincerely,



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